

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on February 5, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: Sen. E. P. "Pete" Ekegren (R)

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 211, 1/22/1999; SB 212,
1/22/1999; SB 310, 2/2/1999;
SB 311, 2/2/1999
Executive Action: None

HEARING ON SB 310

Sponsor: SENATOR ARNIE A. MOHL, SD 39, KALISPELL

Proponents: Mike Foster, Montana Contractors Association
Keith Olson, Montana Logging Association
Jill Andrews, Montana Mining Association

Opponents: None

Opening Statement by Sponsor:

SEN. ARNIE MOHL, SD 39, Kalispell, presented **SB 310** as an act limiting the eligibility for special fuel tax refunds and credits to applicants who are engaged in the business of farming or ranching, and including the harvesting and transport of timber in the definition of "farming or ranching" for the purposes of special fuel tax refunds.

SEN. MOHL said that when the dyed fuels and the clear fuels were created, it got to be a real problem in the construction industry. Contractors were using colored fuels whenever they had a gravel pit off to the side, but they were also using it for hauling purposes. Then their trucks would go on a county road and they would get fined because they had colored fuel in there. This bill clarifies the colored fuel issue and creates a level playing field by specifically exempting certain entities and having all others, mostly the construction industry, forfeit their refunds, which results in about \$2 million going into the Highway Trust Fund for roads.

SEN. MOHL said that there will be some amendments forthcoming which will ensure that this really only affects the construction industry. He said this is a good bill, which was requested by the people who will be forfeiting the refund, and he urged do pass.

Proponents' Testimony:

Mike Foster, Montana Contractors Association, said that **SB 310** and **SB 311** truly are companion bills and hopefully will be considered as such in the committee's deliberations. He said this bill is being introduced because the contractors felt that, administratively, the refund has become a nightmare, not to mention the administrative work involved for the Department of Transportation. He said that the contractors agreed to forfeit the refund, knowing that the funds would go into the Highway Trust Fund. He said the whole emphasis of this bill was to isolate the construction industry. This bill is not intended to take the refund away from some other industry, and so there will be amendments to ensure that that is the case.

Keith Olson, Montana Logging Association, said they rise to speak to the provision in this bill that includes the harvesting and transportation of timber under the agricultural exemption. He said this does not change the status quo; in other words, log haulers and loggers can request a fuel tax refund, and **SEN. MOHL**

has generously written this bill to make sure that happens. He said this amounts to about \$1,000 per truck for log haulers, and for loggers, depending on their size, it amounts to considerably more, \$12,000 to \$14,000 per year. He urged support of this provision.

Jill Andrews, Montana Mining Association, said she had originally come to oppose this bill, but with the amendments, the Montana Mining Association tenders their support of **SB 310**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. GLASER questioned whether the ballot language was a bit confusing by saying we are restricting refunds except for farming, ranching, et cetera. He suggested that it say "increased annually by removing the refund for off-road use by persons engaging in businesses," and then talk about the businesses that are being removed. **SEN. MOHL** agreed that that section is not worded properly and that will be changed.

CHAIRMAN DEVLIN asked **Mr. Foster** how many companies doing the work out there are not members of the Montana Contractors Association, and he responded that the association represents 120 contractors, including highway, heavy building, municipality, and utility, which certainly represents the lion's share of the construction industry that would be affected by this bill.

CHAIRMAN DEVLIN asked about out-of-state and out-of-country companies, and whether they get the refund, and **Mr. Foster** said that he would assume they are eligible by virtue of operating in the state. **Bob Turner, Department of Revenue**, said that if they purchase diesel fuel and gasoline fuel in the state, they can get a refund presently.

SEN. ELLIS asked if this just involves over-the-road vehicles that contractors have, or does it involve the fuel that is used in backhoes and draglines and those types of construction equipment. **SEN. MOHL** said this includes all equipment, with no rebate on any of it. The smaller contractors do not usually have the record keeping, so they rarely apply for a rebate. He said the large dollars would come from the highway construction industry.

SEN. BOHLINGER referred to **SEN. MOHL'S** comment that this will increase the Highway Trust Fund by about \$2 million. He asked, with the federal match that is provided, how much highway construction will be made available in the state of Montana because of this, and he answered that some projects are done by

strictly state money, so there is no match. However, assuming that the full \$2 million was matched with federal dollars, for every \$.13 of the fund, you get \$1 worth of money. The \$2 million could be about \$15 million or \$16 million of federal monies.

Closing by Sponsor:

SEN. MOHL said that Montana will benefit because out-of-state companies will not get a rebate, and that money will stay here. Also, he said, the Department of Transportation will not have to second guess how much rebate money they have to have in reserve. Now they know that every penny that is sold goes into that program. He urged do pass.

HEARING ON SB 311

Sponsor: SENATOR ARNIE A. MOHL, SD 39, KALISPELL

Proponents: Mike Foster, Montana Contractors Association
Keith Olson, Montana Logging Association

Opponents: None

Opening Statement by Sponsor:

SEN. ARNIE MOHL, SD 39, Kalispell, said that it was not possible to run the diesel and the gas together, so **SB 311** was created for the gas tax rebate. He said the Fiscal Note amounts to \$82,000. He said most of the people in the construction industry use diesel, so there is not much gas. He said that the exemptions are the same as the previous bill, only the construction industry will be forfeiting anything.

Proponents' Testimony:

Mike Foster, Montana Contractors Association, said his testimony in support of **SB 311** is the same as he testified on **SB 310**.

Keith Olson, Montana Logging Association, said that they rise in support of **SB 311** for the same reasons as they favored **SB 310**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN DEVLIN said that in discussion of both these bills, it has been mentioned the number of auditors it takes to determine

the refunds. He wondered how many there were. **Bob Turner, Fuel Tax Bureau, Department of Revenue**, said the bill will not affect about 80% of the claims that come through, but 20% of those claims will be eliminated. Most of those, the processing is done with part-time, temporary help, and some of those will be eliminated. **CHAIRMAN DEVLIN** said he would like to know how many bodies that involves, and **Mr. Turner** said he would get that information.

Closing by Sponsor:

SEN. MOHL said that he has some concern that this bill could be lost through the voting process required by **CI-75**, even though it involves someone giving money back. He said it is a good bill, and he will do what he can to make the voting language clear. He urged do pass.

HEARING ON SB 211 AND SB 212

Sponsor: **SENATOR DALE MAHLUM, SD 35, MISSOULA**

Proponents: Candace Payne, Montana Car Rental Association
Dave Galt, Department of Transportation
Dean Roberts, Department of Transportation
Jerry Woodahl, Hertz, Missoula
Rob Doyle, Avis, Missoula
Mike Lucero, Hertz, Bozeman
Steve Costley, Montana Car Rental Association
Mona Jamison, Montana Historical Society Foundation
Alec Hansen, Montana League of Cities and Towns
Brian Cockhill, Montana Historical Society
Foundation
Carl Schweitzer, Bozeman and Kalispell Chambers of
Commerce
Evan Barrett, Montana Economic Developers
Association
Amy Sullivan, Montana Tourism Coalition
Andy Poole, Montana Department of Commerce

Opponents: Robert Ward, Enterprise Rent-a-Car
Dennis Burr, Montana Taxpayers Association
Webb Brown, Montana Chamber of Commerce

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, said that **SB 211** is strictly a shuttle to the voters. If **SB 212** happens, **SB 211** sends it to the voters.

SEN. MAHLUM said that **SB 212** primarily does two distinct functions. It reimburses the owners of the rental car agencies a portion of the tax they pay for their yearly license fee. Presently, the rental car agencies have to pay the license fees and taxes on their inventories the same as individual residents. This bill gives them more of a fair shot at being a viable Montana merchant, a fair shot at making a living in Montana. After the agency owners have received their rebates, if this bill is enacted, these rebates will be spent on remodeling their lots, and improving the appearance of their premises.

The rest of the money, **SEN. MAHLUM** told the committee, goes to the Montana Heritage and Preservation and Development Account. This is an account established by the legislature that is watched over by the legislature. It is audited and is looked after for sound business practices that are necessary. After the car rental agencies receive their 50% of the cost of their licenses, the remaining monies will be divided up as follows: 10% to local governments, 10% to the General Fund, and the remaining 80% goes to the Montana Heritage and Historical Fund.

Proponents' Testimony:

Candace Payne, Montana Car Rental Association, said that Section 1 is the definition section, and strictly limits this rebate to those vehicles rented for a period of not more than 30 days. Section 2 (b) specifically exempts cars rented for an insurance contract. Section 3 says that the rental car agencies have to report on a quarterly basis and must apply to the Department of Revenue for a permit so that they can participate in this program; Section 3 (b) sets out a penalty for failure to report and pay; and Section 6 sets out the provisions for credit in the event of overpayment.

Ms. Payne said that this will help Montana car rental agencies compete with car rental agencies who license their cars out of state, and presented a visual aid showing comparisons with other states. Idaho charges \$70 to license rental cars; North Dakota, \$57; Montana, \$342; South Dakota has a pass-through which when refunded results in a zero charge for licenses; Washington is the same; and Wyoming is also at zero. She said it is easy to see how difficult it is for agencies in Montana to license their cars and compete.

Dave Galt, Administrator, Motor Carrier Services, Montana Department of Transportation, said his agency gets involved with rental cars through the International Registration Plan of those who have operations on an interstate basis. A rental car agency that operates in Montana and other states is required to register

a percentage of their fleet at the county level. This fleet percentage is based upon the percentage of their company revenue earned in Montana compared to their total revenue.

Mr. Galt said that because of Montana's high cost for registering cars, there is an incentive to license cars in our neighboring states, or license cars of lesser value in Montana. These practices prevent us from collecting our fair share of rental car registration fees and require expensive and in-depth audits.

Other states like Montana have chosen a rental car pass-through tax which allows rental car companies to get a portion of their registration fees returned to them, thereby creating an incentive to license the appropriate number of cars in Montana. He said because of the Department's involvement with rental car agencies, they have spent a considerable amount of time with them in an attempt to find a solution. He believes that **SB 212** offers that solution, and the Department stands in support of the bill. He provided written testimony, **EXHIBIT (tas29a01)**.

Dean Roberts, Administrator, Motor Vehicle Division, Department of Transportation, said that the other thing this bill does very well is protect the local rental car companies who have found it difficult to compete. This bill creates a level playing field for regional and local companies.

Jerry Woodahl, Hertz, Missoula, said he has no other operation except the Missoula location. He said that **SB 212** provides tax relief for the high vehicle registration fees. He said his license fees for his operation exceed \$40,000 a year. This bill would encourage out-of-state operations to register more of their vehicles in Montana. He encouraged support for this legislation.

Rob Doyle, Avis Rent-a-Car, Missoula, Kalispell and Billings, said the main reason he urges support is that a lot of his competitors have out-of-state plates because they are multi-state car rental companies. He said the plates for his company run about \$65,000 a year, and because they operate only in Montana, they pay the high fees. He said this bill would make that more equitable.

Mike Lucero, Hertz, Bozeman, said that they have noticed a dramatic increase in the number of their competitors who license their vehicles in other states. He said that this proposed legislation would encourage everyone to license their fleets in Montana.

Steve Costley, Montana Car Rental Association, said that the ownership of the rental car industry in Montana is changing. He

said large corporations are taking over the smaller franchises that have been operated by Montanans in the past. This has resulted in a large number of rental vehicles being rented with out-of-state registration and plates, denying Montana its fair share of licensing and registration fees and creating a disadvantage for the smaller Montana-based operator and the companies complying with the licensing and registration requirements of the state of Montana. **SB 212** will equalize requirements for all operators by creating an incentive to license their vehicles in Montana and provide much needed tax relief for those operators. It also provides an enforcement tool for the state to ensure that all the operators are paying a fair share of fees and registrations based upon their revenue that is generated in this state. He urged support.

Mona Jamison, Montana Historical Society Foundation, said that her organization views the surcharge as a fairness issue to the industry and to the consumer. She presented a chart that showed that Montana is one of four states that do not have a rental car tax, **EXHIBIT (tas29a02)**.

On the distribution, **Ms. Jamison** referred the committee to page 5, line 25, of **SB 212**, which indicates that 80% goes to the Montana heritage preservation and development account, and \$200,000 of that each year goes to the Main Street Program. The heritage account allows the Heritage Commission to spend money on the restoration and preservation of the many historic properties throughout the state. The Main Street Program is not established yet. It will be a program through the Department of Commerce, but would work with the Montana Historical Society to make sure that this restoration of our Montana communities is done to be historically correct. She urged support.

Alec Hansen, Montana League of Cities and Towns, said he enthusiastically supports the Main Street Program because it offers the best hope that Montana has to do something about the small towns of Montana that are dying out. It will help revitalize central business districts of cities and towns all across Montana. He said this is not a direct subsidy. The emphasis of Main Street is in the area of technical assistance. This is a national program run by the National Trust for Historic Preservation which will provide design assistance, marketing and promotional assistance, and guidance and coordination from the state level. Evidence shows that this program works very well.

Brian Cockhill, Montana Historical Society Foundation, said that he had visited Southern Alberta where the Main Street Program has been very successful. It promotes economic development, jobs, and turnover of dollars, but it also gives a sense of place to

people. He said this is a bill which provides a brick in the process of building the kinds of communities that Montana wants and will probably be the sort of thing that will save many communities that are withering away at this time.

Carl Schweitzer, Bozeman and Kalispell Chamber of Commerce, said his organization supports **SB 211** and **SB 212**, but asked the committee if it might be prudent to consider earmarking the distribution to the local governments and the General Fund for road and bridge maintenance.

Evan Barrett, Montana Economic Developers Association and Butte Economic Development Corporation, said that the Main Street Program provides new and exciting tools to address the needs of small communities, both for the historical and economic aspects. In many small towns in Montana, the main street is the totality of the economy, and it is shrinking. He said these are good bills, and he urged their passage.

Amy Sullivan, Montana Tourism Coalition, said her organization welcomes the rental car tax and are hopeful that it will help and benefit Montana.

Andy Poole, Deputy Director, Montana Department of Commerce, said that the Governor has 14 bills going through the legislature as part of his jobs and income plan. This is one of those bills. The reason for this bill is that the Department of Commerce, in the last few years, has talked to people in Montana and they had concerns about the main streets of Montana. He said that from 1990 to 1996, the population in Montana grew about 10%, 80,000 people. Many of the counties had significant increases, but there were 19 counties in Montana that lost population, some more than 10%. The Department of Commerce sees this as an opportunity to help economic development in rural Montana from the standpoint that it will provide resources paid for by out-of-state residents to help rural Montana survive.

Opponents' Testimony:

Robert Ward, Vice-President, General Manager, Enterprise Rent-a-Car of Montana, said that Enterprise feels it is very unfair to target a specific industry to fund these particular projects. He questioned why a selective tax targeting one industry should pay for a benefit to the entire public. He said it should be funded with a broader-based tax program.

Mr. Ward also said it will not be only out-of-state people who will fund this tax. Enterprise of Montana actually rents to Montanans three of every four rentals, which totals over 16,000

rentals last year to Montanans. The vast majority of these rentals come throughout the state for the replacement market, which consists of auto dealerships, local repair facilities and insurance claims centers. Enterprise's goal is to provide the highest level of service at reasonable costs, and therefore are in opposition to this tax.

Dennis Burr, Montana Taxpayers Association, said that a general tax reform would be better to handle these types of problems than specific sales or excise taxes such as this bill provides for. He said he feels that every program should compete for money from the General Fund and the legislature can set the priorities.

Webb Brown, Montana Chamber of Commerce, said that the Chamber supports broad-based tax reform, and urged the committee to keep that in mind when considering this bill.

Questions from Committee Members and Responses:

SEN. ELLIS asked **SEN. MAHLUM** why, considering the information provided by **Ms. Payne**, and the relative neutrality to the customer whether he pay a tax that is a percentage or use tax or a license tax, it was not set another percent or two higher and complete the job of making this equivalent to Idaho and North Dakota in that particular diagram. **SEN. MAHLUM** said that two years ago the bill came in giving the rental car people 75%. In talking to a lot of the legislators, there was concern that we were giving them back too much, so we settled on 50%.

SEN. ELLIS then asked **Robert Ward** about the agencies he operates and whether they are licensed out of state, and **Mr. Ward** said that they are. He said their operations are in Montana and Wyoming, so some of their vehicles are plated in Wyoming. However, he said they also have vehicles in Wyoming that are plated in Montana. **SEN. ELLIS** asked if he could give a percentage of how many cars operated in Montana are licensed in Wyoming. **Mr. Ward** said the percentages would be approximately the same. He said, as an example, that if they had 1,000 cars, with 200 of them plated in Wyoming and the rest in Montana, those cars go back and forth, so there would be Wyoming plated cars in Montana and Montana plated cars in Wyoming, so the revenue should be the same.

CHAIRMAN DEVLIN asked **Mr. Galt** if he was testifying for the Department of Transportation and he said he was.

SEN. GLASER then asked **Mr. Galt** how many rental cars are licensed in Montana at the 1%, and **Mr. Galt** answered that that is difficult to know, but that the Fiscal Note reflects 4,200

vehicles, and that is a 1997 figure from the Montana Rental Car Association. **SEN. GLASER** then asked if these fleet vehicles were at 1%, and **Mr. Galt** responded that they are still at 2%, but they have the option of licensing for six months. There is a section in the registration statutes that allows rental car vehicles to license for six months as opposed to a year. **SEN. GLASER** asked again whether these were fleet vehicles, and **Mr. Galt** said that some are, but according to the statutes on registration, some of the fleet vehicles that are licensed through the Department of Transportation are for intrastate use, and are fleets over 100 and belong to intrastate companies like Montana Power, UPS, about seven fleets.

SEN. BOHLINGER said that both **Dennis Burr** and **Webb Brown** supported broad-based tax reform, or general tax reform. He said he believes that tax reform takes place in a step-by-step manner, and that he sees this particular measure as a way to help fund the Main Street Program, which may give new life to business districts throughout Montana, will help fund historic preservation, will add to the tourist industry and provide reasons for coming to Montana, and he wondered if it wouldn't help sell more cars from Montana auto dealers to rental companies and help expand our economy. **Mr. Burr** said all of that may be true, but he said it still suffers from some of the downsides that he mentioned. He said he believes tax reform can be built incrementally, but he also believes that those funds would be better in the General Fund so that the legislature has the option of making the decisions of where that money goes.

CHAIRMAN DEVLIN asked **Ms. Jamison** how many of the dark-colored states on her chart have a sales tax that goes on rental vehicles and how many have local options that are applied to rental vehicles. **Ms. Jamison** said she could not answer that. She said she had been told that this tax represented the state tax imposed specifically on rental cars and the local rental car tax. The states without a sales tax also do not have the rental car tax. **CHAIRMAN DEVLIN** then asked what those states use that money for and whether it is used for historical preservation in those states or not, and **Ms. Jamison** said she didn't know, but that they would get that information for the committee.

SEN. ECK asked **Mr. Ward** about the part of the proposed bill that says that the surcharge does not apply to the rental base for rental vehicles rented pursuant to a contract for insurance, and **Mr. Ward** said he was not sure what a contract for insurance represents. He said that Enterprise probably does 99% of the insurance business out there, and no one has asked them what a contract of insurance is. Dealerships and repair shops are

mostly renting for service work. There is a 6% tax on that, and he would assume that is not a contract for insurance.

SEN. ECK then asked **Ms. Payne** the same question, and she replied that she did not know what the percentages are. She said that both the insurance people and the Department seemed to be perfectly comfortable with the language. **SEN. ECK** asked if anyone from the Department of Revenue could answer that question, and **Mr. Smith** said he had no knowledge of anyone speaking on this bill. He said he would find out. He also said he could not say whether the definition for contract for insurance is correct.

SEN. ECK then asked if someone from the Department would be responsible for developing the forms to administer this tax, and **Mr. Smith** said that was correct. **SEN. ECK** asked if this would be a difficult matter to have on the form of whether or not it is an insurance or repair related rental, and **Mr. Smith** said he could not answer that, but that he would find out.

SEN. ELLIS asked **Mr. Woodahl** about the testimony of proponents of this bill that the use of these rental cars was primarily out-of-state customers, and then one provider said that 99% of his business is insurance related and that the out-of-state scenario simply wasn't so. He asked if he could give us an idea with regard to Hertz and his particular outlet what that figure is, and **Mr. Woodahl** said that for the on-airport rental car companies, which includes National, Budget, Avis and Hertz, probably 95% of their business is out-of-state.

SEN. DEPRATU asked **SEN. MAHLUM** if at some time in the future Montana passes a sales tax, whether this tax would be in addition to the sales tax. **SEN. MAHLUM** said he had not considered this issue because this was a tax to deal with a present problem. He said that should Montana get a sales tax at some time in the future, this particular tax should be addressed with that piece of legislation. **SEN. DEPRATU** said that the technical note indicated that should this become effective, all operators would have to file their forms on the 15th of February of 2000, even though they hadn't collected any funds for the previous year. **SEN. MAHLUM** said that that is a typographical error, that there should be another year on that.

CHAIRMAN DEVLIN then asked **SEN. MAHLUM** if there was any restriction in this bill about how the agencies spend the rebate that they get, and he responded that there was not, but that some of the rental car agencies had said that they would like to use it to beautify their lots. **CHAIRMAN DEVLIN** then asked about the referral to **HB 132**, and what the status of that bill is, and **SEN. MAHLUM** said he did not know. **Ms. Payne** explained that this is a

bill to standardize penalty and interest on late or delinquent taxes. It was heard on the House floor the last day or two, and she did not know how it was voted on. **Don Hoffman, Department of Revenue**, further explained that **HB 132** is a bill to standardize penalty and interest that applies to delinquent taxes in Montana, and that it was heard in House Tax, so it will be coming to this committee once it clears the House.

CHAIRMAN DEVLIN then asked if matching funds would be involved if some of this money was designated for bridges and roads, and **Mr. Galt** said that any money spent on local roads would have to be a federal aid secondary or federal aid urban road and it would qualify for federal monies.

SEN. ECK said that each county would get \$180,000, and **SEN. MAHLUM** said that basically, after the monies have been split at the end of a fiscal year, there will be approximately \$1,180,000. 10% of that would be \$118,000, and that would be split amongst the counties, approximately \$2,100.

SEN. GLASER asked **Mr. Ward** whether Enterprise keeps their vehicles longer than six months or less than six months, and he said they keep them on average 12 to 18 months. **SEN. GLASER** said that they have an average license fee of \$342. If that average license fee dropped to \$220 the middle of next year, he wondered what that is going to do with the mix with Wyoming. **Mr. Ward** said it would not change the mix at all, but it would save Enterprise a considerable amount of money.

Closing by Sponsor:

SEN. MAHLUM thanked the committee for a good hearing. He also passed out a rental slip from Denver, **EXHIBIT (tas29a03)**, for the committee's information. He went on to say that he felt that the insurance issue had been addressed in this bill, but that it could be addressed more thoroughly by the committee if they desired. He said if this bill does become a reality, the counties in our state will have more money because there will be more dealers that will be licensing more of their cars.

SEN. MAHLUM said this proposed bill is good for our state and the members of the rental car business and the communities that need help which is really not available in monetary funds presently. This is a bill designed to help create funding to help Montana business remain equal with the neighboring states in their industry. It uses the residual money that is remaining for fixing up our historic main streets.

ADJOURNMENT

Adjournment: 9:45 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas29aad)